

**MINUTES OF THE
JUDICIARY INTERIM COMMITTEE**

Wednesday, May 17, 2006 – 10:00 a.m. – Room W130 House Building

Members Present:

Sen. David L. Thomas, Senate Chair
Rep. James A. Ferrin, House Chair
Sen. Patrice M. Arent
Rep. Douglas C. Aagard
Rep. Stephen D. Clark
Rep. Ben C. Ferry
Rep. Lorie D. Fowlke
Rep. Ann W. Hardy
Rep. Neal B. Hendrickson
Rep. David L. Hogue
Rep. Eric K. Hutchings
Rep. Susan Lawrence
Rep. Ross I. Romero

Rep. LaWanna Shurtliff
Rep. Scott L. Wyatt

Members Absent:

Sen. Gregory S. Bell
Sen. L. Alma Mansell
Sen. Scott D. McCoy
Sen. Darin G. Peterson

Staff Present:

Mr. Jerry D. Howe, Policy Analyst
Ms. Esther Chelsea-McCarty, Associate General Counsel
Ms. A. Brooke Ollerton, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

Although a quorum was not yet present, Chair Ferrin called the meeting to order at 10:07 a.m. He announced that no motions would be accepted until a quorum was present.

2. Gender In Determining Child Custody

Ms. Chelsea-McCarty briefed the Committee on the issue of gender in determining child custody. She outlined the case law, explaining that the courts have abandoned the maternal preference, and the Legislature has codified the standard of the child's best interest in Sections 30-3-5 and 30-3-10.

Dr. David Lauret, concerned citizen, described his experience with determining child custody after his divorce and distributed a copy of his remarks. He asked the Committee to study the level of custody awarded to fathers in child custody cases, the duration of temporary orders, and default parenting plans under temporary orders.

Mr. James Lauret, concerned citizen, expressed his belief that most divorced fathers want to remain involved in their children's lives.

The Committee discussed temporary custody orders and asked questions of Dr. Lauret.

Chair Ferrin asked Mr. Rick Schwermer, Assistant Court Administrator, Administrative Office of the Courts, to prepare for a later committee meeting information regarding: 1) the typical length of temporary orders before a permanent order is given; 2) the percentage of temporary orders which become permanent; and 3) the percentage of temporary orders that are settled with and without a trial.

3. Sunset Review

Mr. Schwermer distributed "Supreme Court Rules of Professional Practice – Chapter 13A, Rule 1.0, Authorization to practice law," and reviewed the issue of the unauthorized practice of law and the sunset provision of Section 78-9-101. He outlined the history of the Utah Supreme Court rules on the unauthorized practice of law and pointed out that both a rule and statute exist which govern the issue. He said that the definition and regulation of the practice of law is clear given the court's rule. He opined that the role of the legislature would be to provide criminal penalties in statute. However, beyond that, the practice of law falls within the supreme court's jurisdiction according to the constitution. He said that the courts were indifferent to the decision to sunset or not because the statute is consistent with the court rule.

Ms. Matty Branch, Appellate Court Administrator, Utah Court of Appeals, explained that the rule defines both the practice of law and who may practice law. It also lists certain common activities which are beneficial to the public that are included in the definition, but may be engaged in by nonlawyers without being considered the unauthorized practice of law.

Committee members asked Ms. Branch questions about the definition of the practice of law under the rule, investigations of unauthorized practice, and prerequisites for practicing law.

Ms. Chelsea-McCarty asked under what authority the Bar pursues those who practice law without a license.

Mr. John T. Nielsen, Lobbyist, Utah State Bar, stated that when the statute was inadvertently repealed, Bar counsel was concerned that there was no statute that would allow them to pursue action against those practicing law without authorization. He stated his personal view that it was beneficial to leave the statute in place because it enables the Bar to pursue those individuals.

Ms. Chelsea-McCarty said that the statute allows the Bar to pursue those who are not lawyers because the Bar only has authority over lawyers and without the statute, the Utah State Bar has no authority over nonlawyers.

Rep. Stephen Urquhart, Utah House of Representatives, said he supported extending the sunset to demonstrate that the Legislature has a interest in this issue. He stated a concern that most Utahns do not have access to the courts because of the high cost of legal services.

The Committee discussed the purpose of the sunset and whether to keep or repeal it.

4. Statutorily Required Reports

A. Mandatory Educational Course for Divorcing Parents, Section 30-3-11.3

Mr. Schwermer distributed a memorandum, "Divorce Education for Parents Program Annual Report," and described the success of the program in 2005. He answered questions from the Committee.

B. Dispute Resolution Program, Section 78-31b-4

Mr. Schwermer distributed "Mandatory Divorce Mediation, Impact of House Bill 4 (2005 session)." He reviewed the number of cases reported, highlighted the high rates of resolution, and pointed out new statistics on the mandatory divorce mediation program.

Ms. Kathy Elton, Director, Alternative Dispute Resolution, Administrative Office of the Courts, said that the court is required to schedule mandatory mediation cases with visitation issues within fifteen days of referral. This means that parties are getting a hearing much more quickly than before the program started.

5. Other Items / Adjourn

Without a quorum present, Chair Ferrin suggested that the Committee come to the next meeting prepared to vote on whether or not, and if so, for how long, the sunset date on the unauthorized practice of law statute should be extended.

MOTION: Rep. Hogue moved to adjourn the meeting. The motion passed unanimously.

Chair Ferrin adjourned the meeting at 11:56 p.m.